

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Riley Johannessohn, Daniel C. Badilla,
James Kelley, Kevin R. Wonders,
William Bates, and James Pinion,

Plaintiffs,

V.

Polaris Industries Inc.,

Defendant.

CLASS ACTION

16-cv-3348-NEB-LIB

**DECLARATION OF R. ALLAN PIXTON IN SUPPORT
OF DEFENDANT POLARIS INDUSTRIES INC.'S OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Under 28 U.S.C. §1746, I, R. Allan Pixton, declare as follows:

1. My name is R. Allan Pixton. I am a partner in the law firm of Kirkland & Ellis LLP. I am one of the attorneys representing defendants Polaris Industries Inc. in this action, and have been admitted *pro hac vice* in this case. (Dkt. 152.) I submit this declaration in support of Defendant's Opposition to Plaintiffs' Motion for Class Certification.
2. Attached hereto as Appendix A is a true and correct copy of Polaris's Consumer Protection Statute Survey. This survey is submitted in response to Tab C to plaintiffs' motion for class certification.
3. Attached hereto as Exhibit 1 is a true and correct copy of the index of exhibits for this memorandum in opposition.

4. Attached hereto as Exhibit 2 is a true and correct copy of Polaris's 2012 Model Year U.S. Retail Price List, produced by Polaris at bates stamp POL_SPT_RJ_00008294.

5. Attached hereto as Exhibit 3 is a true and correct copy of Polaris's 2009 Model Year U.S. Retail Price List, produced by Polaris at bates stamp POL_SPT_RJ_00010554.

6. Attached hereto as Exhibit 4 is a true and correct copy of the Declaration of Nathan Dahl.

7. Attached hereto as Exhibit 5 are true and correct excerpts of the official transcript of the October 5, 2018 deposition of plaintiff James Pinion.

8. Attached hereto as Exhibit 6 is a true and correct copy of the Declaration of Grey Bassinger.

9. Attached hereto as Exhibit 7 is a true and correct copy of the Declaration of Adam Dawson.

10. Attached hereto as Exhibit 8 is a true and correct copy of the Declaration of Brent Flambures.

11. Attached hereto as Exhibit 9 are true and correct excerpts of the official transcript of the August 8, 2018 deposition of Bryce Evans.

12. Attached hereto as Exhibit 10 are true and correct excerpts of the official transcript of the June 29, 2018 deposition of Jason Fields.

13. Attached hereto as Exhibit 11 are true and correct excerpts of the official transcript of the August 23, 2018 deposition of Robin Stroot.

14. Attached hereto as Exhibit 12 are true and correct excerpts of the official transcript of the June 18, 2018 deposition of Nathan Dahl.

15. Attached hereto as Exhibit 13 is a true and correct copy of a document titled “Potential Melt Components - Sportsman 550/850/1000,” produced by Polaris at bates stamp POL_SPT_RJ_00000426.

16. Attached hereto as Exhibit 14 is a true and correct excerpts of the official transcript of the December 20, 2017 deposition of Robin Stroot.

17. Attached hereto as Exhibit 15 are true and correct excerpts of the January 31, 2019 Expert Report of Kevin Breen.

18. Attached hereto as Exhibit 16 is a true and correct copy of a presentation dated January 19, 2017 made by Polaris regarding the Sportsman XP field action, produced by Polaris at bates stamp POL_SPT_RJ_00002354.

19. Attached hereto as Exhibit 17 are true and correct excerpts of the official transcript of the August 16, 2018 deposition of Jonathon DeKay.

20. Attached hereto as Exhibit 18 is a true and correct copy of a presentation dated May 5, 2014 made by Polaris regarding Model Year 2016 Sportsman vehicles, produced by Polaris at bates stamp POL_SPT_RJ_00001714 and POL_SPT_RJ_00001715.

21. Attached hereto as Exhibit 19 is a true and correct copy of a presentation dated October 31, 2014 made by Polaris regarding Model Year 2016 ATV planned changes, produced by Polaris at bates stamp POL_SPT_RJ_00001315.

22. Attached hereto as Exhibit 20 is a true and correct copy of a presentation made by Polaris to the CPSC regarding Model Year 2015 and 2016 Sportsman 850 and 1000 side panels, produced by Polaris at bates stamp POL_SPT_RJ_00000078.

23. Attached hereto as Exhibit 21 is a true and correct copy of a document, produced by Polaris summarizing vehicle claims data, produced by Polaris at bates stamp POL_SPT_RJ_00000124.

24. Attached hereto as Exhibit 22 is a true and correct copy of an email regarding Sportsman 570 seats, produced by Polaris at bates stamp POL_SPT_RJ_00001156.

25. Attached hereto as Exhibit 23 is a true and correct copy of an email regarding Sportsman 570 seats, produced by Polaris at bates stamp POL_SPT_RJ_00001164.

26. Attached hereto as Exhibit 24 is a true and correct copy of a document regarding the Sportsman 570 seat kit, produced by Polaris at bates stamp POL_SPT_RJ_00004197 and POL_SPT_RJ_00004198.

27. Attached hereto as Exhibit 25 is a true and correct copy of an email regarding inquiries into Sportsman 570 seat issues, produced by Polaris at bates stamp POL_SPT_RJ_00001654.

28. Attached hereto as Exhibit 26 is a true and correct copy of a Presentation dated December 14, 2015 made by Polaris to the CPSC regarding MY 2014 Sportsman 570 ATVs, produced by Polaris at bates stamp POL_SPT_RJ_00000418.

29. Attached hereto as Exhibit 27 is a true and correct copy of the MY 2014 and MY 2015 Sportsman 570 seat upgrade kit instructions, produced by Polaris at bates stamp POL_SPT_RJ_00000080.

30. Attached hereto as Exhibit 28 is a true and correct copy of MY 2014 and MY 2015 Sportsman 570 Touring seat upgrade kit instructions, produced by Polaris at bates stamp POL_SPT_RJ_00000081.

31. Attached hereto as Exhibit 29 is a true and correct copy of a document containing driver comments, produced by Polaris at bates stamp POL_SPT_RJ_00004191.

32. Attached hereto as Exhibit 30 is a true and correct copy of a document containing driver comments, produced by Polaris at bates stamp POL_SPT_RJ_00004192.

33. Attached hereto as Exhibit 31 is a true and correct copy of a letter from Polaris to the CPSC dated November 16, 2016 containing responses to information requests regarding Model Year 2014 Sportsman ATVs, produced by Polaris at bates stamp POL_SPT_RJ_00000424.

34. Attached hereto as Exhibit 32 is a true and correct copy of Polaris Incident Report 13633, produced by Polaris at bates stamp POL_SPT_RJ_00002537.

35. Attached hereto as Exhibit 33 is a true and correct copy of the Polaris Incident Report 13633 additional counter-measure document, produced by Polaris at bates stamp POL_SPT_RJ_00002536.

36. Attached hereto as Exhibit 34 is a true and correct copy of an email regarding Sportsman 570 exhaust heat shielding, produced by Polaris at bates stamp POL_SPT_RJ_00001904.

37. Attached hereto as Exhibit 35 is a true and correct copy of a Presentation dated July 15, 2016 made by Polaris to the CPSC regarding Polaris' Sportsman 570 investigation and testing, produced by Polaris at bates stamp POL_SPT_RJ_00000420.

38. Attached hereto as Exhibit 36 is a true and correct copy of a presentation dated May 3, 2017 made by Polaris to the CPSC regarding a proposed Sportsman 570 field action, produced by Polaris at bates stamp POL_SPT_RJ_00000421.

39. Attached hereto as Exhibit 37 is a true and correct copy of an incident report investigation closing document, produced by Polaris at bates stamp POL_SPT_RJ_00007762.

40. Attached hereto as Exhibit 38 is a true and correct copy of the Polaris Incident Report 20213 additional information document, produced by Polaris at bates stamp POL_SPT_RJ_00007759.

41. Attached hereto as Exhibit 39 is a true and correct copy of a July 21, 2017 Service Advisory Frequently Asked Questions document for the ASA-17-01 Service Advisory, produced by Polaris at bates stamp POL_SPT_RJ_00000104.

42. Attached hereto as Exhibit 40 is a true and correct copy of a July 21, 2017 ASA-17-01 Service Advisory for Model Year 2014-2017 Sportsman 570 ATVs and Model Year 2016-2017 Sportsman 450 HO ATVs, produced by Polaris at bates stamp POL_SPT_RJ_00000105.

43. Attached hereto as Exhibit 41 is a true and correct copy of Polaris Incident Report 9578, produced by Polaris at bates stamp POL_SPT_RJ_00002572.

44. Attached hereto as Exhibit 42 is a true and correct copy of Polaris Incident Report 15576, produced by Polaris at bates stamp POL_SPT_RJ_00002548.

45. Attached hereto as Exhibit 43 is a true and correct copy of the additional countermeasure document for Polaris Incident Report 15576, produced by Polaris at bates stamp POL_SPT_RJ_00002547.

46. Attached hereto as Exhibit 44 is a true and correct copy of a safety Bulletin announcement to dealers, produced by Polaris at bates stamp POL_SPT_RJ_00001609.

47. Attached hereto as Exhibit 45 is a true and correct copy of the March 21, 2017 A-17-01-B Bulletin, produced by Polaris at bates stamp POL_SPT_RJ_00000068.

48. Attached hereto as Exhibit 46 is a true and correct copy of the March 21, 2017 A-17-01-C Bulletin, produced by Polaris at bates stamp POL_SPT_RJ_00000069.

49. Attached hereto as Exhibit 47 is a true and correct copy of the the March 21, 2017 A-17-01-D Bulletin, produced by Polaris at bates stamp POL_SPT_RJ_00000070.

50. Attached hereto as Exhibit 48 is a true and correct copy of a testing report for the Sportsman 850 and 1000 recall kit, produced by Polaris at bates stamp POL_SPT_RJ_00008291.

51. Attached hereto as Exhibit 49 is a true and correct copy of a presentation dated January 9, 2017 regarding field testing of the Model Year 2016 Sportsman 850 and 1000 ATVs, produced by Polaris at bates stamp POL_SPT_RJ_00008591.

52. Attached hereto as Exhibit 50 is a true and correct copy of an email regarding testing of the Sportsman 850 and 1000 recall kit, produced by Polaris at bates stamp POL_SPT_RJ_00002340.

53. Attached hereto as Exhibit 51 is a true and correct copy of a presentation regarding testing related to Polaris Incident Report 20213, produced by Polaris at bates stamp POL_SPT_RJ_00007929.

54. Attached hereto as Exhibit 52 is a true and correct copy of testing data for the Model Year 2017 Sportsman 570, produced by Polaris at bates stamp POL_SPT_RJ_00007699.

55. Attached hereto as Exhibit 53 is a true and correct copy of testing data for the Model Year 2014 Sportsman 570, produced by Polaris at bates stamp POL_SPT_RJ_00009046.

56. Attached hereto as Exhibit 54 is a true and correct copy of a presentation regarding ATV side panel testing produced by Polaris at bates stamp POL_SPT_RJ_00002304 and POL_SPT_RJ_00002305.

57. Attached hereto as Exhibit 55 is a true and correct copy of a presentation regarding Sportsman 850 chassis dynamometer testing, produced by Polaris at bates stamp POL_SPT_RJ_00001553.

58. Attached hereto as Exhibit 56 is a true and correct copy of a presentation regarding Sportsman 1000 chassis dynamometer testing, produced by Polaris at bates stamp POL_SPT_RJ_00001555 and POL_SPT_RJ_00001556.

59. Attached hereto as Exhibit 57 is a true and correct copy of a presentation regarding Sportsman 850 heat shield testing, produced by Polaris at bates stamp POL_SPT_RJ_00008549.

60. Attached hereto as Exhibit 58 is a true and correct copy of a presentation made by Polaris to the CPSC regarding the Sportsman 850 and 1000 recall kit, produced by Polaris at bates stamp POL_SPT_RJ_00002368 and POL_SPT_RJ_00002369.

61. Attached hereto as Exhibit 59 is a true and correct copy of the Declaration of Neil Kluempke.

62. Attached hereto as Exhibit 60 is a true and correct copy of the Declaration of Luke Stokes.

63. Attached hereto as Exhibit 61 is a true and correct copy of a presentation dated December 15, 2016 regarding competitive benchmarking testing, produced by Polaris at bates stamp POL_SPT_RJ_00007835.

64. Attached hereto as Exhibit 62 are true and correct excerpts of the official transcript of the January 18, 2019 deposition of Colin Jordan.

65. Attached hereto as Exhibit 63 are true and correct excerpts of the January 13, 2019 Expert Report of Lorin Hitt.

66. Attached hereto as Exhibit 64 are true and correct excerpts of the official transcript of the May 18, 2018 deposition of plaintiff Daniel Badilla.

67. Attached hereto as Exhibit 65 are true and correct excerpts of the official transcript of the August 2, 2018 deposition of plaintiff William Bates.

68. Attached hereto as Exhibit 66 are true and correct excerpts of the official transcript of the July 17, 2018 deposition of plaintiff Kevin Wonders.

69. Attached hereto as Exhibit 67 are true and correct excerpts of the official transcript of the June 20, 2018 deposition of plaintiff Riley Johannessohn.

70. Attached hereto as Exhibit 68 is a true and correct copy of Polaris' Model Year 2016 U.S. Retail Price List, produced by Polaris at bates stamp POL_SPT_RJ_00008299.

71. Attached hereto as Exhibit 69 are true and correct excerpts of the official transcript of the August 15, 2018 deposition of James Kelley.

72. Attached hereto as Exhibit 70 is a true and correct copy of a Vehicle Retail Buyer's Order, produced by plaintiff James Kelley at Kelley-000040 and marked as Exhibit 6 at Kelley's deposition.

73. Attached hereto as Exhibit 71 are true and correct excerpts of the January 31, 2019 Expert Report of Natalie Mizik.

74. Attached hereto as Exhibit 72 is a true and correct copy of a presentation dated July-August 2015 regarding market research on ATV usage, produced by Polaris at bates stamp POL_SPT_RJ_00010615.

75. Attached hereto as Exhibit 73 is a true and correct copy of a presentation dated January-February 2017 regarding customer survey data, produced by Polaris at bates stamp POL_SPT_RJ_00010623.

76. Attached hereto as Exhibit 74 are true and correct excerpts of the March 21, 2019 Rebuttal Expert Report of Sarah Butler.

77. Attached hereto as Exhibit 75 are true and correct excerpts of the November 16, 2018 Expert Report of Sarah Butler.

78. Attached hereto as Exhibit 76 are true and correct excerpts Exhibit H to the November 16, 2018 Expert Report of Sarah Butler.

79. Attached hereto as Exhibit 77 is a true and correct copy of back-up material to the Supplemental Report of Peter Rossi, which was marked as Exhibit 18 at Rossi's deposition.

80. Attached hereto as Exhibit 78 are true and correct excerpts of the official transcript of the May 14, 2019 deposition of Peter Rossi.

81. Attached hereto as Exhibit 79 is a true and correct copy of a presentation titled "Why owners like their Sportsman" dated August 2018, produced by Polaris at POL_SPT_RJ_00010611.

82. Attached hereto as Exhibit 80 is a true and correct copy of the Model Year 2016 Sportsman 570 Owner's Manual for Maintenance and Safety, produced by Polaris at bates stamp POL_SPT_RJ_00010458.

83. Attached hereto as Exhibit 81 is a true and correct copy of results of a Polaris customer survey, produced by Polaris at bates stamp POL_SPT_RJ_00010603.

84. Attached hereto as Exhibit 82 is a true and correct copy of an ATV Sales Post, available at <https://hibid.com/lot/50155008/2016-polaris-sportsman-touring-570-sp-deluxe-2/?q=&ref=lot-list> (last accessed June 18, 2019 at 5:29 p.m. CDT).

85. Attached hereto as Exhibit 83 are true correct excerpts of the official transcript of the January 15, 2019 deposition of Sarah Butler.

86. Attached hereto as Exhibit 84 are true and correct excerpts of the March 21, 2019 Rebuttal Expert Report of Richard Eichmann.

87. Attached hereto as Exhibit 85 are true correct excerpts of the official transcript of the January 17, 2019 deposition of Richard Eichmann.

88. Attached hereto as Exhibit 86 are true and correct excerpts of the November 16, 2018 Expert Report of Richard Eichmann.

I declare under penalty of perjury that the foregoing is true and correct.

Date: June 21, 2019

/s/ R. Allan Pixton
R. Allan Pixton